

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

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UNITED STATES OF AMERICA : **DECLARATION**

-v.- : **S3 05 Cr. 621 (KMK)**

ALBERTO WILLIAM VILAR, :
a/k/a, "Albert Vilar," and :
GARY ALAN TANAKA, :

Defendants. :

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MARC LITT, pursuant to 28 U.S.C. § 1746, declares under penalty of perjury as follows:

I am an Assistant United States Attorney in the Office of Michael J. Garcia, United States Attorney for the Southern District of New York, attorney for the United States of America. I respectfully submit this declaration in support of the Government's Opposition to Defendants' Motion for a *Franks* Hearing. I have personal knowledge of the facts set forth in this Declaration.

1. True and correct copies of excerpts from the hearing held in this matter on May 31, 2006, are attached hereto as Exhibit A.

2. True and correct copies of excerpts from the hearing held in this matter on July 7, 2006, are attached hereto as Exhibit B.

3. A true and correct copy of a document titled "Investment Management Agreement" dated April 30, 1987, that was seized during the search of Amerindo Investment Advisors Inc.'s office at 399 Park Avenue, New York, New York, on or about May 26, 2005 (the "Search"), is attached hereto as Exhibit C. The address of the recipient has been redacted to protect her privacy.

4. A true and correct copy of a letter from Alberto W. Vilar to Lily Cates, dated April 30, 1987, that was seized during the Search, is attached hereto as Exhibit D. The address of the recipient has been redacted to protect her privacy.

5. A true and correct copy of a letter from Alberto W. Vilar to Lily Cates, dated October 1, 1987, that was seized during the Search, is attached hereto as Exhibit E. The address of the recipient has been redacted to protect her privacy.

6. A true and correct copy of a letter from Gary A. Tanaka and Alberto W. Vilar to Lily Cates, dated March 14, 1988, that was provided to the Government by a representative of Lily Cates, is attached hereto as Exhibit F. The address of the recipient has been redacted to protect her privacy.

7. True and correct copies of excerpts from the hearing held in this matter on July 10, 2006, are attached hereto as Exhibit G.

8. A true and correct copy of a letter from Alberto W. Vilar to Lily Cates, dated March 27, 1989, that was provided to the Government by a representative of Lily Cates, is attached hereto as Exhibit H. The address of the recipient has been redacted to protect her privacy.

9. A true and correct copy of a document titled "NOTICE OF ACCEPTANCE pursuant to the Private Placement Memorandum for Rhodes Capital Group Limited ("the Company") issued on August 1, 1989," dated June 6, 1989, and signed by Alberto W. Vilar, that was provided to the Government by a representative of Lily Cates, is attached hereto as Exhibit I. The address of the recipient has been redacted to protect her privacy.

10. A true and correct copy of a letter from Alberto W. Vilar to Lily Cates, dated

April 29, 1990, that was provided to the Government by a representative of Lily Cates, is attached hereto as Exhibit J. The address of the recipient has been redacted to protect her privacy.

11. A true and correct copy of a letter from Alberto W. Vilar to Lily Cates, dated December 24, 1991, that was provided to the Government by a representative of Lily Cates, is attached hereto as Exhibit K. The address of the recipient has been redacted to protect her privacy.

12. A true and correct copy of a letter from Alberto W. Vilar to Lily Cates, dated October 7, 1992, that was provided to the Government by a representative of Lily Cates, is attached hereto as Exhibit L. The address of the recipient has been redacted to protect her privacy.

13. A true and correct copy of a document titled "DISCRETIONARY POWER OF ATTORNEY AND INVESTMENT REPRESENTATIONS," signed by Lily Cates, dated September 1, 1994, that was provided to the Government by a representative of Lily Cates, is attached hereto as Exhibit M. The address of the recipient has been redacted to protect her privacy.

14. A true and correct copy of a letter from Alberto W. Vilar to Lily Cates, dated September 9, 1994, that was provided to the Government by a representative of Lily Cates, is attached hereto as Exhibit N. The address of the recipient has been redacted to protect her privacy.

15. A true and correct copy of a letter from Alberto W. Vilar to Lily Cates, dated August 3, 2004, that was provided to the Government by a representative of Lily Cates, is

attached hereto as Exhibit O. The address of the recipient has been redacted to protect her privacy.

16. A true and correct copy of an e-mail chain dated January 4, 2005, between Gary Tanaka and Michael Shattner, then an employee of Amerindo Investment Advisors Inc. in New York, New York, that was obtained from the United Kingdom pursuant to an MLAT request in or about November 2005, is attached hereto as Exhibit P.

17. A true and correct copy of a letter from Alberto Vilar to Lily Cates, dated January 10, 2005, that was provided to the Government by a representative of Lily Cates, is attached hereto as Exhibit Q. The address of the recipient has been redacted to protect her privacy.

18. A true and correct copy of a certified copy of a Schedule 13G received by the U.S. Securities and Exchange Commission ("SEC") on or about February 1, 2005, is attached hereto as Exhibit R.

19. A true and correct copy of Part II of a Form ADV completed by Amerindo Investment Advisors Inc., dated July 31, 2004, that was seized during the Search, is attached hereto as Exhibit S.

20. A true and correct copy of a letter from Alberto W. Vilar and Gary A. Tanaka to the SEC, dated February 28, 2003, that was provided to the Government by the SEC, is attached hereto as Exhibit T.

21. A true and correct copy of a letter from Alberto Vilar to Cheryl M. Lawson, Investor Assistance Specialist, SEC, dated May 20, 2005, which was obtained from counsel for Amerindo Investment Advisors Inc., Eugene Licker, Esq., is attached hereto as Exhibit U.

22. A true and correct copy of a letter from Alberto W. Vilar to Dr. Herbert Mayer, dated November 24, 1987, that was provided to the Government by a representative of Dr. Mayer, is attached hereto as Exhibit V. The address of the recipient has been redacted to protect his privacy.

23. A true and correct copy of a document titled "Certificate of Guaranteed Fixed Rate Deposit Account," signed by Alberto W. Vilar and Gary A. Tanaka, dated April 8, 1988, that was provided to the Government by a representative of Dr. Mayer, is attached hereto as Exhibit W. The address of Dr. Mayer has been redacted to protect his privacy.

24. A true and correct copy of a letter from Gary A. Tanaka, Alberto W. Vilar, and Barry C. Fong to Dr. Herbert Mayer, dated April 11, 1988, that was provided to the Government by a representative of Dr. Mayer, is attached hereto as Exhibit X. The address of the recipient has been redacted to protect his privacy.

25. A true and correct copy of a letter from Alberto W. Vilar to Dr. Herbert Mayer, dated April 11, 1988, that was provided to the Government by a representative of Dr. Mayer, is attached hereto as Exhibit Y. The address of the recipient has been redacted to protect his privacy.

26. A true and correct copy of a summary of the documents contained in Exhibit P to the Declaration of Jessica L. Margolis, Esq., which I prepared on or about September 14, 2006, titled "SUMMARY OF DEFENDANTS' EXHIBIT P," is attached hereto as Exhibit Z.

27. True and correct copies of excerpts from the hearing held in this matter on August 8, 2006, are attached hereto as Exhibit AA.

28. True and correct copies of excerpts from the hearing held in this matter on

August 9, 2006, are attached hereto as Exhibit BB.

29. Neither I, nor U.S. Postal Inspector Cynthia M. Fraterrigo, spoke with Paul Marcus prior to May 26, 2005.

30. Neither I, nor U.S. Postal Inspector Cynthia M. Fraterrigo, spoke with Joy Ulrich prior to May 26, 2005.

I declare, under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: September 21, 2006
New York, New York

A handwritten signature in black ink, appearing to read "Marc Litt", is written over a horizontal line.

Marc Litt
Assistant United States Attorney
(212) 637-2295